

Assembly Bill No. 1301

CHAPTER 335

An act to amend Section 22958 of, and to repeal and add Section 22974.8 of, the Business and Professions Code, and to amend Section 308 of the Penal Code, relating to cigarettes and tobacco products.

[Approved by Governor September 15, 2012. Filed with
Secretary of State September 15, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1301, Hill. Retail tobacco sales: STAKE Act.

Existing law, the California Cigarette and Tobacco Licensing Act of 2003, requires a retailer to obtain a license from the State Board of Equalization to engage in the sale of cigarette and tobacco products in California. Existing law, the Stop Tobacco Access to Kids Enforcement Act, or STAKE Act, establishes various requirements for retailers relating to tobacco sales to minors. Existing law also makes it a misdemeanor for a retailer to knowingly or under circumstances in which it has knowledge, or should otherwise have grounds for knowledge, sell, give, or in any way furnish a minor with tobacco products or paraphernalia.

Under existing law, violations of the STAKE Act or the above-described misdemeanor provision result in board action, on a set schedule, relating to the licensure of the retailer when the youth purchase survey finds that 13% or more of youth are able to purchase cigarettes. Existing law makes the board's authority inoperative when a youth purchase survey shows less than 13% of youth were able to purchase cigarettes. Under existing law, enforcing agencies assess civil penalties in prescribed amounts against a person, firm, or corporation that sells, gives, or in any way furnishes to a person under 18 years of age specified tobacco products. Moneys from these penalties are deposited in the Sale of Tobacco to Minors Control Account in the State Treasury.

This bill would remove the schedule for board action in response to the occurrence of a violation, as defined, of the STAKE Act or the misdemeanor provision. The bill would declare that these changes would not result in the limitation or termination of specified board investigations and actions. The bill would require the board to assess a civil penalty and to suspend or revoke a retailer's license, as specified, for the 3rd, 4th, or 5th violation. The bill would require the assessment of an additional civil penalty, as specified, to be deposited in the existing Cigarette and Tobacco Products Compliance Fund, which would be made available, upon appropriation by the Legislature, to fund these suspension and revocation activities.

The people of the State of California do enact as follows:

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) According to the American Cancer Society, almost 90 percent of adults who are regular smokers started at or before age 19.

(b) A 2009 survey from the United States Centers for Disease Control and Prevention found that nearly one-half of high school students had tried cigarette smoking and more than one out of four high school students were current tobacco users.

(c) Smoking-related diseases remain the leading cause of preventable death in the United States, claiming the lives of 438,000 Americans annually.

(d) According to the State Department of Public Health's California Tobacco Control Program survey, 74 percent of youth access enforcement agencies reported issuing warnings to merchants selling tobacco products to minors in 2006.

(e) The California Tobacco Control Program survey also found that law enforcement agencies continued to rank the suspension or revocation of licenses and civil and criminal penalties for owners and clerks as effective strategies to reduce youth access to tobacco.

SEC. 2. Section 22958 of the Business and Professions Code is amended to read:

22958. (a) An enforcing agency may assess civil penalties against any person, firm, or corporation that sells, gives, or in any way furnishes to another person who is under the age of 18 years, any tobacco, cigarette, cigarette papers, any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substance, according to the following schedule: (1) a civil penalty of from four hundred dollars (\$400) to six hundred dollars (\$600) for the first violation, (2) a civil penalty of from nine hundred dollars (\$900) to one thousand dollars (\$1,000) for the second violation within a five-year period, (3) a civil penalty of from one thousand two hundred dollars (\$1,200) to one thousand eight hundred dollars (\$1,800) for a third violation within a five-year period, (4) a civil penalty of from three thousand dollars (\$3,000) to four thousand dollars (\$4,000) for a fourth violation within a five-year period, or (5) a civil penalty of from five thousand dollars (\$5,000) to six thousand dollars (\$6,000) for a fifth violation within a five-year period.

(b) (1) In addition to the civil penalties described in subdivision (a), upon the assessment of a civil penalty for the third, fourth, or fifth violation, the department, within 60 days of the date of service of the final administrative adjudication on the parties or payment of the civil penalty for an uncontested violation, shall notify the State Board of Equalization of the violation. The State Board of Equalization shall then assess a civil penalty of two hundred fifty dollars (\$250) and suspend or revoke a license issued pursuant to Chapter 2 (commencing with Section 22972) of Division 8.6 in accordance with the following schedule:

(A) A 45-day suspension of the license for a third violation at the same location within a five-year period.

(B) A 90-day suspension of the license for a fourth violation at the same location within a five-year period.

(C) Revocation of the license for a fifth violation at the same location within a five-year period.

(2) The provisions of Chapter 4 (commencing with Section 55121) of Part 30 of Division 2 of the Revenue and Taxation Code apply with respect to the collection of the penalty imposed by the State Board of Equalization pursuant to paragraph (1).

(c) (1) For each suspension or revocation pursuant to subdivision (b), the civil penalty of two hundred fifty dollars (\$250) assessed pursuant to that subdivision, notwithstanding Section 22953, shall be deposited into the Cigarette and Tobacco Products Compliance Fund established pursuant to Section 22990. Moneys from that civil penalty deposited into this fund shall be made available to the State Board of Equalization, upon appropriation by the Legislature, for the purposes of meeting its duties under subdivision (b).

(2) The department shall, upon request, provide to the State Board of Equalization information concerning any person, firm, or corporation that has been assessed a civil penalty for violation of the STAKE Act pursuant to this section when the department has notified the State Board of Equalization of the violation.

(d) The enforcing agency shall assess penalties pursuant to the schedule set forth in subdivision (a) against a person, firm, or corporation that sells, offers for sale, or distributes tobacco products from a cigarette or tobacco products vending machine, or a person, firm, or corporation that leases, furnishes, or services these machines in violation of Section 22960.

(e) An enforcing agency may assess civil penalties against a person, firm, or corporation that sells or deals in tobacco or any preparation thereof, and fails to post conspicuously and keep posted in the place of business at each point of purchase the notice required pursuant to subdivision (b) of Section 22952. The civil penalty shall be in the amount of two hundred dollars (\$200) for the first offense and five hundred dollars (\$500) for each additional violation.

(f) An enforcing agency shall assess penalties in accordance with the schedule set forth in subdivision (a) against a person, firm, or corporation that advertises or causes to be advertised a tobacco product on an outdoor billboard in violation of Section 22961.

(g) If a civil penalty has been assessed pursuant to this section against a person, firm, or corporation for a single, specific violation of this division, the person, firm, or corporation shall not be prosecuted under Section 308 of the Penal Code for a violation based on the same facts or specific incident for which the civil penalty was assessed. If a person, firm, or corporation has been prosecuted for a single, specific violation of Section 308 of the Penal Code, the person, firm, or corporation shall not be assessed a civil

penalty under this section based on the same facts or specific incident upon which the prosecution under Section 308 of the Penal Code was based.

(h) (1) In the case of a corporation or business with more than one retail location, to determine the number of accumulated violations for purposes of the penalty schedule set forth in subdivision (a), violations of this division by one retail location shall not be accumulated against other retail locations of that same corporation or business.

(2) In the case of a retail location that operates pursuant to a franchise as defined in Section 20001, violations of this division accumulated and assessed against a prior owner of a single franchise location shall not be accumulated against a new owner of the same single franchise location for purposes of the penalty schedule set forth in subdivision (a).

(i) Proceedings under this section shall be conducted pursuant to Section 131071 of the Health and Safety Code, except in cases where a civil penalty is assessed by an enforcing agency other than the department, in which case proceedings shall be conducted pursuant to the procedures of that agency that are consistent with Section 131071 of the Health and Safety Code.

SEC. 3. Section 22974.8 of the Business and Professions Code is repealed.

SEC. 4. Section 22974.8 is added to the Business and Professions Code, to read:

22974.8. (a) Except as provided in subdivision (b), the board shall suspend or revoke the license of a retailer upon notification by the State Department of Public Health pursuant to subdivision (b) of Section 22958.

(b) Notwithstanding any other provision regarding the suspension or revocation of a license pursuant to this part, the board shall provide a licensee with at least 10 days' written notice of a pending suspension or revocation pursuant to this section and an opportunity to appeal the suspension or revocation and the civil penalty assessed pursuant to subdivision (b) of Section 22958 only to correct a mistake or clerical error. The board shall not accept or consider an appeal of suspension or revocation under this section if the appeal is founded upon the grounds of whether the retailer, or any employee or agent of the retailer, violated the STAKE Act (Division 8.5 (commencing with Section 22950)) for which violation civil penalties are imposed by the State Department of Public Health pursuant to subdivision (a) of Section 22958. This section shall not be construed to prevent the board from modifying its action on its own to correct a mistake or clerical error.

SEC. 5. Section 308 of the Penal Code is amended to read:

308. (a) (1) Every person, firm, or corporation that knowingly or under circumstances in which it has knowledge, or should otherwise have grounds for knowledge, sells, gives, or in any way furnishes to another person who is under the age of 18 years any tobacco, cigarette, or cigarette papers, or blunts wraps, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, products prepared from tobacco, or any controlled substance, is subject to either a criminal action for a misdemeanor or to a civil action brought by a city attorney, a county counsel, or a district attorney, punishable by a fine

of two hundred dollars (\$200) for the first offense, five hundred dollars (\$500) for the second offense, and one thousand dollars (\$1,000) for the third offense.

Notwithstanding Section 1464 or any other law, 25 percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the office of the city attorney, county counsel, or district attorney, whoever is responsible for bringing the successful action, and 25 percent of each civil and criminal penalty collected pursuant to this subdivision shall be paid to the city or county for the administration and cost of the community service work component provided in subdivision (b).

Proof that a defendant, or his or her employee or agent, demanded, was shown, and reasonably relied upon evidence of majority shall be defense to any action brought pursuant to this subdivision. Evidence of majority of a person is a facsimile of or a reasonable likeness of a document issued by a federal, state, county, or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operator's license, a registration certificate issued under the federal Selective Service Act, or an identification card issued to a member of the Armed Forces.

For purposes of this section, the person liable for selling or furnishing tobacco products to minors by a tobacco vending machine shall be the person authorizing the installation or placement of the tobacco vending machine upon premises he or she manages or otherwise controls and under circumstances in which he or she has knowledge, or should otherwise have grounds for knowledge, that the tobacco vending machine will be utilized by minors.

(2) For purposes of this section, "blunt wraps" means cigar papers or cigar wrappers of all types that are designed for smoking or ingestion of tobacco products and contain less than 50 percent tobacco.

(b) Every person under the age of 18 years who purchases, receives, or possesses any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking of tobacco, products prepared from tobacco, or any controlled substance shall, upon conviction, be punished by a fine of seventy-five dollars (\$75) or 30 hours of community service work.

(c) Every person, firm, or corporation that sells, or deals in tobacco or any preparation thereof, shall post conspicuously and keep so posted in his, her, or their place of business at each point of purchase the notice required pursuant to subdivision (b) of Section 22952 of the Business and Professions Code, and any person failing to do so shall, upon conviction, be punished by a fine of fifty dollars (\$50) for the first offense, one hundred dollars (\$100) for the second offense, two hundred fifty dollars (\$250) for the third offense, and five hundred dollars (\$500) for the fourth offense and each subsequent violation of this provision, or by imprisonment in a county jail not exceeding 30 days.

(d) For purposes of determining the liability of persons, firms, or corporations controlling franchises or business operations in multiple

locations for the second and subsequent violations of this section, each individual franchise or business location shall be deemed a separate entity.

(e) Notwithstanding subdivision (b), any person under 18 years of age who purchases, receives, or possesses any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, any other instrument or paraphernalia that is designed for the smoking of tobacco, or products prepared from tobacco, while participating in the enforcement activities that comply with the guidelines adopted pursuant to subdivisions (c) and (d) of Section 22952 of the Business and Professions Code is immune from prosecution for that purchase, receipt, or possession.

(f) It is the Legislature's intent to regulate the subject matter of this section. As a result, a city, county, or city and county shall not adopt any ordinance or regulation inconsistent with this section.

SEC. 6. A change made by the repeal and addition of Section 22974.8 of the Business and Professions Code pursuant to Sections 3 and 4 of this act shall not result in the limitation or termination of an investigation or action by the State Board of Equalization of a violation under that section that occurred on or before January 1, 2013.